

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)	
)	
Plaintiff.)	
)	
v.)	Case No. 18-cv-102
)	
MARK ANTHONY LOVELY)	
)	
Defendant,)	
)	

**RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

1. Nature of the Matter

The Plaintiff seeks to collect federal income taxes and civil penalties which have neither been proven nor do they exist. The supposed assessments that a delegate would be required to sign in accordance with:

26 C.F.R. § 301.6020-1(b) Execution of returns-

(1) In general.

If any person required by the Internal Revenue Code or by the regulations to make a return ... fails to make such return at the time prescribed therefore, or makes, willfully or otherwise, a false, fraudulent or frivolous return, the Commissioner or other authorized Internal Revenue Officer employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Form of the return.

A document (or set of documents) signed by the Commissioner or other authorized Internal Revenue Officer or employee shall be a return for a person described in paragraph (b)(1) of this section if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and purports to be a return.

do not appear on the record. Other than mentioning 26 U.S.C. § 6702(a) plaintiff does not identify how those returns are frivolous. Again please see below

26 U.S.C. § 6702(a):

(a) Civil penalty for frivolous tax returns A [person](#) shall pay a penalty of \$5,000 if—

(1) such [person](#) files what purports to be a return of a tax imposed by this title but which—

(A)

does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B)

contains information that on its face indicates that the self-assessment is substantially incorrect, and

(2) the conduct referred to in paragraph (1)—

(A)

is based on a position which the [Secretary](#) has identified as frivolous under subsection (c), or

(B)

reflects a desire to delay or impede the administration of Federal [tax](#) laws.

Please identify how the returns are frivolous (1)(A) or (B) and (2)(A) or (B), that really shouldn't be that hard, and should be a requirement before proceeding with a summary judgment when it is clearly required to be identified. This is why I said that they come to the table with Unclean Hands in Defendant's Motions to Dismiss with prejudice this case for Petitioner's Fraud on the Court, Failure to State a Claim Upon which Relief can be granted (12b6), and Unclean Hands.

Defendant does expect to have his property returned to him if Plaintiff can not prove liability and jurisdiction which does not appear on the record. The individual income tax is an indirect, uniform, excise tax predicated on one's involvement in a federally taxable activity, or exercising government granted

privileges that is what Congress has passed as the income tax law. This is supported by **Brushaber v. Union Pacific R. Co., 240 U.S. 1 (1916)** and the Congressional Record of the 78th Congress Volume 89-part 2 Exhibit H. Defendant did in fact file income tax returns to recover amounts that had been withheld in the event that an actual tax liability would have come into existence, this didn't happen and the Congressional Record Filed as Exhibit A explains how to recover withholdings where no tax was due and that is to file an income tax return which becomes an automatic claim for refund.

II. Statement of Undisputed Facts?

a. Civil Penalty Assessment under 26 U.S.C. § 6702 (a)

Defendant is not a tax defier. Plaintiff has yet to identify how under 6702 (a) the returns are or would be frivolous, see above please and the Response to Anita Bond's Declaration. Defendant report zero income because he had not exercised any government granted privileges, nor been involved in any federally taxable activities that would create an indirect, uniform, excise tax, and a W-2 does not prove that I did. Nor is there even any such thing as a W-2 wage earner. The W-2 is an information return and in the instant case these W-2's most certainly were disputed, rebutted, and corrected using Forms 4852 Exhibit G and these will be an addendum to Government Exhibit D since they did not include them as they are an integral part of any and all returns. W-2s, on their own, do not create tax liability. They are information returns, filed by a third party to the relationship between the IRS and the taxpayer (or non-taxpayer), which reports income as that third party

believes it to be. Please also note that on the Forms 4852 Defendant is The Internal Revenue Code makes it clear that a Form W-2 is not the final word on what a taxpayer's taxable income is. Please see 26 U.S.C. § 6201 (d):

(d) Required reasonable verification of information returns

In any court proceeding, if a [taxpayer](#) asserts a reasonable dispute with respect to any item of income reported on an information return filed with the [Secretary](#) under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the [Secretary](#) (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the [Secretary](#)), the [Secretary](#) shall have the burden of producing reasonable and probative information concerning such [deficiency](#) in addition to such information return.

The liability is the very thing that is disputed! I don't understand how you do not understand this yet! The United States is not entitled to judgment unless and until it can prove liability and jurisdiction. Defendants is entitled to refunds See again Southern Pacific Co. v. Lowe, 247 U.S. 330 (1918) in the Response to Declaration of Revenue Officer Anita Bond.

III. Questions Presented

Please place into evidence the signed assessments for civil penalties, and prove the liability issue for the tax returns. And yes is the answer to the question "Is defendant entitled to a tax refund when he filed returns that falsely reported zero income but claimed tax withholdings and deductions?" Unless the Plaintiff can prove conclusively that Defendant has earned "Wages" from the exercise of

government granted privileges, or involvement in federally taxable activities the answer to the Question c is yes.

IV Summary Judgment Standard

Obviously in this case there is a “genuine dispute as to any material fact” and the movant is not entitled to judgment as a matter of law because Plaintiff hasn’t proven it’s case, and doesn’t seem to want to! *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 248 (1986) Held The Court of Appeals did not apply the correct standard in reviewing the District Court's grant of summary judgment. Pp. [477 U. S. 247](#)-257. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) *Held*. The Court of Appeals did not apply proper standards in evaluating the District Court's decision to grant petitioners' motion for summary judgment. Pp. [475 U. S. 582](#)-598.

V. Argument

a. The United States is not Entitled to Judgment in the unverified amounts shown because it has not meet it’s requirement on Burden of Proof.

Lets take 2009 as a case study. Defendant filed his return just as he has in the past. Please see Exhibit J. That was on Feb. 9, 2010, on March 15, 2010 the return had obviously been accepted and processed because this letter CP-49 shows that the \$649.05 refund had been applied to other federal taxes which our records show that you owe. Please see again Exhibit C. Then Defendant replied to this letter asking “what was the difference between this year (2009) and the other years?” The answers are all in Exhibit K. Basically the Court will see that there

were no answers just like in the instant case where the Plaintiff and their client are still involved in obfuscation, again Un-clean Hands. The Forms 4852 Exhibit G should suffice as evidence that contradicts any so called assessments, and the Plaintiff is incorrect about Defendant being a taxpayer. As pointed out above 26 U.S.C. § 6201 (d) the burden shifts to the Secretary when taxpayer or in this case non-taxpayer presents credible evidence.

i. Civil Penalty Assessments

Defendant is not by any stretch of the imagination a tax defier, nor has the Plaintiff explained how the returns are Frivolous by identifying § 6702(a) (1)(A) or (B) and (2)(A) or (B). This has already been covered above. Please identify the delegate of the Secretary of the Treasury who signed the assessments and place them into evidence.

ii. Federal Income Tax Assessment

Defendant did not intend for the 2014 return to be filed and has explained himself in the Response to Declaration of Revenue Officer Anita Bond. Again please identify the delegate who supposedly signed these assessments and place into evidence. Please see Exhibit G for the Forms 4852 rebutting the erroneous third party income information.

iii. Outstanding Balance

The only amounts outstanding are the amounts shown on Defendant's Motions to Dismiss. Defendant has not refused to pay any taxes, in fact they have all been pre-paid in advance, the Government is trying to keep those funds in spite

of the fact that non-frivolous returns claiming the return of those amounts have been filed. As stated above for 2009 the Government even agreed to and applied this amount to “other tax liabilities” which I questioned.

b. Defendant is in fact Entitled to Tax Refunds

As Defendant has stated before the original Tax Returns according to the Congressional Record Exhibit A, and are the only claims for tax refunds. Defendant has most certainly exhausted all administrative remedies and suffered through years of obfuscation and delay. This case is not about taxes that have been erroneously or illegally assessed or collected. Withholding is not illegal, continuing to hold property after a legitimate claim for there return is, not explaining how or why is. Why was Defendants 2009 return accepted and the other years found to be frivolous, and meritless? The withholdings being held after claims for their return is frivolous and meritless. Withholdings are not taxes, W-2s do not create liability, and private sector “employers” are not under any obligation to withhold.

Defendant has not said that there is no congressional authority creating the Internal Revenue Service, Defendant has only pointed out what has been said by the USDOJ with reference to the IRS not being an agency. Again that is not Defendant that is the USDOJ. So it was the USDOJ’s argument that is wholly without merit. Please see Exhibit B.

Obviously Defendants claim for refund for 2009 was asserted properly and met the requirements of 26 U.S.C. §§ 7422 and 6511, just as it has for 100s of

1000s of claimants with returns just like Defendants 2009 return. Please see again Government Exhibit D, and Exhibit G and you will see that I have not failed to submit any claims for refund to the IRS.

VI. Conclusion

So as you can see there most certainly a genuine dispute as to material facts that the Plaintiff has not addressed, nor rebutted. There are no signed federal income taxes or civil penalty assessments against the defendant on the record.

American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909)
"Words having universal scope, such as 'every contract in restraint of trade,' 'every person who shall monopolize,' etc., will be taken, as a matter of course, to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch."

And in Gould v. Gould, 245 U.S. 151 (1917)
"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen."

Defendant has not refused to pay any outstanding tax liabilities, defendant has asked for proof of liability and has to date not received any. Further still notice and demand for taxes according to 26 U.S.C. § 6331(a):

(a) Authority of Secretary

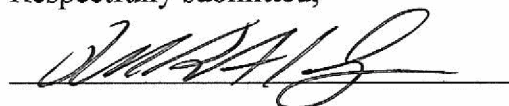
If any [person](#) liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the [Secretary](#) to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the [United States](#), the District of Columbia, or any agency or instrumentality of the [United](#)

or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

Here you can see that notice and demand may be made on officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia. Defendant has not been employed by or was an officer, employee, or elected official of the United States or the District of Columbia. This group of people are not in the private sector, and are exercising a government granted privilege, or are involved in a federally taxable activity. Defendant is not within that group. The Government has processed Defendants 2009 return which is operationally the same as any of the others and was not found to be frivolous. Defendant believe that he is somehow being singled out because of his conservative values or Christian beliefs, but Defendant can not understand how the returns are frivolous or how the Government can say the there was no tax liability for 2009 but that there were for other years when Defendant worked for the same people and or the same field. It just doesn't add up!

Date: December 21, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Anthony Lovely', written over a horizontal line.

Mark Anthony Lovely
c/o 1235 Amylee Trail
Kernersville, NC 27284

Phone: (336) 601-4641
Email:
Authorized Representative


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2018, I electronically filed the foregoing **RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to those registered to receive it. I also served a copy via first class mail to:

Erin F. Darden, Trial Attorney
U.S. Department of Justice, Tax Division
PO Box 227
Washington, D.C. 20044

attorney for the Plaintiff: United States of America.

Date: December 21, 2018



Mark Anthony Lovely
Authorized Representative